

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

T.D.R,

Plaintiff,

v.

KILOLO KIJAKAZI,

Defendant.

Case No. 19-cv-04353-LB

**ORDER GRANTING THE
PLAINTIFF'S COUNSEL'S MOTION
FOR ATTORNEY'S FEES**

Re: ECF No. 29

INTRODUCTION

The court previously granted the plaintiff's motion for summary judgment and remanded the action to the Social Security Administration for further proceedings.¹ On remand, the plaintiff received a past-due benefits award.² Her counsel now seeks fees of \$21,650, which is within the 25-percent limit in 42 U.S.C. § 406(b) and the representation agreement with his client.³ The court can decide this matter without oral argument. *See* N.D. Cal. Civ. L.R. 7-1(b). The court grants the motion.⁴

¹ Order – ECF No. 24. Citations refer to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Notice of Award – ECF No. 29-3 at 1–3.

³ Mot. – ECF No. 29-1.

⁴ The court declines the plaintiff's counsel's request to apply a 3.21 multiplier. *See id.* at 5–6.

1 **STATEMENT**

2 The Commissioner withheld 25 percent of the retroactive benefits, or \$22,794.41.⁵ The
3 plaintiff has a fee agreement with her lawyer that provides for a 25-percent contingency fee of the
4 award as of the final decision.⁶ The plaintiff's attorney has already received \$3,650.00 in
5 attorney's fees under the Equal Access to Justice Act (EAJA).⁷ He agreed that he will refund the
6 EAJA fees.⁸

7 The Commissioner filed a response to the plaintiff's motion stating that he "neither supports
8 nor opposes counsel's request for attorney's fees."⁹

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10 **ANALYSIS**

11 Under 42 U.S.C. § 406(b), "[w]henver a court renders a judgment favorable to a [social
12 security] claimant . . . , the court may determine and allow as part of its judgment a reasonable
13 fee" for the claimant's counsel, which can be no more than 25 percent of the total of past-due
14 benefits awarded to the claimant. 42 U.S.C. § 406(b)(1)(A). A court may award such a fee even if
15 the court's judgment did not immediately result in an award of past-due benefits; where the court
16 has rendered a judgment favorable to a claimant by reversing an earlier determination by an ALJ
17 and remanding for further consideration, the court may calculate the 25-percent fee based upon
18 any past-due benefits awarded on remand. *See, e.g., Crawford v. Astrue*, 586 F.3d 1142, 1147 (9th
19 Cir. 2009) (en banc).

20 In considering a motion for attorney's fees under § 406(b), the court must review counsel's
21 request "as an independent check" to ensure that the contingency fee agreement "yield[s]
22 reasonable results." *See Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). Section 406(b) "does
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25 ⁵ Mot. – ECF No. 29-1 at 2 & n.2 (explaining that the Social Security Administration withheld this
amount even though it does not specify in its notices of awards that it did so).

26 ⁶ Fee Agreement – ECF No. 29-4.

27 ⁷ Order – ECF No. 27.

28 ⁸ Mot. – ECF No. 29-1 at 2.

⁹ Resp. – ECF No. 33.

not displace contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts to review for reasonableness fees yielded by those agreements.” *Id.* at 808–09. To evaluate the reasonableness of a fee request under § 406(b), the court considers the character of the representation and the results achieved. *Id.* at 808; *see also Crawford*, 586 F.3d at 1151. This includes analyzing whether substandard representation justifies awarding less than 25 percent in fees; any delay in the proceedings attributable to the attorney requesting the fee; whether the benefits of the representation are out of proportion to time spent on the case; and the risk counsel assumed by accepting the case. *See Crawford*, 586 F.3d at 1151–52 (citing *Gisbrecht*, 535 U.S. at 808). If an attorney “is responsible for delay . . . a reduction [of fees] is in order so that the attorney will not profit from the accumulation of benefits during the pendency of the case in court.” *Gisbrecht*, 535 U.S. at 808 (cleaned up); *see also Crawford*, 586 F.3d at 1151.

The court must offset an award of § 406(b) attorney’s fees by any award of fees granted under the EAJA. *Gisbrecht*, 535 U.S. at 796; *Parrish v. Comm’r of Soc. Sec. Admin.*, 698 F.3d 1215, 1218 (9th Cir. 2012).

The 25-percent contingency-fee agreement is within § 406(b)(1)(A)’s ceiling, and the amount is reasonable.

CONCLUSION

The court finds that a fee award of \$21,650.00 is reasonable under § 406(b). The plaintiff’s counsel must refund the plaintiff the EAJA fees, which results in a net (remaining) fee award of \$18,000.

IT IS SO ORDERED.

Dated: August 28, 2023



LAUREL BEELER
United States Magistrate Judge